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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 6 February 2001 from Mr. Vincent Del Buono, Deputy Secretary General of Amnesty International, addressed to the United Nations High Commissioner for Human Rights

GE.01-11621 (E)

In response to your letter of 23 January 2001, Amnesty International is pleased to submit the following comments on the final report of the International Commission of Inquiry for Togo.

1. Publication of the report of the International Commission of Inquiry

Amnesty International very much welcomes the fact that the International Commission of Inquiry was able to conclude its work despite the difficulties encountered. In line with the Commission's first recommendation and as a matter of principle regarding all international commissions of inquiry, Amnesty International strongly urges that the report be made public.

2. Persistence of gross human rights violations and impunity

Amnesty International notes the key conclusion of the International Commission of Inquiry that during 1998, the year to which the Commission was mandated to limit its inquiry, there was a situation of systematic violations of human rights in Togo and that allegations of extrajudicial executions, "disappearances", torture, arbitrary arrest and rape should be further investigated and those responsible brought to justice. Amnesty International has long denounced the recurrence of gross human rights violations and the persistence of a situation of impunity in Togo, calling repeatedly on the Togolese authorities, in correspondence and meetings with them in the country and abroad, to redress this situation. However, the Togolese authorities have persistently failed to end such violations and bring those responsible to justice, even when calls for action have been made by Togo's own National Commission for Human Rights, as in 1991, when it concluded that security forces were involved in the killings of people whose bodies were found in the Bé lagoon.

Impunity in Togo has also been a central concern of the Human Rights Committee. When, in 1994, the Committee last reviewed the human rights situation in Togo since 1988, it concluded:

> "The Committee deplores the large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review. It is deeply concerned that those violations were not followed by any inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished and that the victims were not compensated."

The 1994 conclusion of the Human Rights Committee is confirmed by the International Commission of Inquiry for 1998 and still stands today: there is a long-standing pattern of impunity for gross human rights violations in Togo. Noting that an escalation of violations took place in the context of the national parliamentary elections of 1998, Amnesty International fears that such an escalation may recur again in the context of the next elections due in October 2001. Amnesty International fully endorses the Commission's recommendation that perpetrators of violations must be brought to justice both to ensure there is no impunity for past violations and to deter future ones. We also wish to highlight the following.

3. Proper judicial investigation and international monitoring

Given the persistence of the situation of impunity and the tactics of intimidation of human rights defenders and others, as documented extensively in the Commission's report and elsewhere, the question must be asked whether a national judicial investigation, as recommended by the Commission, will be able to establish the facts and ensure that perpetrators are brought to justice. Amnesty International stresses the need to ensure that any such judicial investigation, if established, is conducted strictly in accordance with relevant international standards, notably the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the United Nations General Assembly in 1989, and the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (United Nations, 1991). It is particularly important to ensure that any such investigation is fully resourced and has the authority to compel officials to testify (Principle 10). Its members should be chosen for their recognized impartiality, competence and independence (Principle 11) and complainants, witnesses and those conducting the investigation and their families must be effectively protected from any form of intimidation (Principle 15). Amnesty International believes that such an investigation would greatly benefit from international judicial and other experts among its members.

While Amnesty International regrets that the Commission did not benefit from expert support such as that of forensic pathologists and aviation experts, it welcomes the Commission's recommendation that such experts be sent to the area as soon as possible, including a team of pathologists to undertake exhumations in Togo and Benin. These further investigations should be carried out promptly and in accordance with international standards, notably the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (see above) and the 1995 Guidelines for the conduct of United Nations inquiries into allegations of massacres. The authorities in Togo and Benin should provide full cooperation. The report of these investigations should be made public.

Amnesty International welcomes the recommendation that the Commission on Human Rights appoint a special rapporteur on the human rights situation in Togo and calls on the Commission on Human Rights to implement this recommendation immediately.

Amnesty International also welcomes the recommendation that the relevant thematic Special Rapporteurs of the Commission on Human Rights and the African Commission on Human and People's Rights visit Togo and Benin, and reiterates its call to the two Governments to invite the relevant Special Rapporteurs and also the Working Group on Enforced or Involuntary Disappearances. Their reports should make specific recommendations for the prevention of any such violations in future and be made public.

4. Protection of witnesses

Amnesty International shares the concern of the International Commission of Inquiry about the protection of witnesses and others who have collaborated with the Commission and welcomes the efforts so far by it to ensure such protection. Amnesty International believes that ensuring adequate protection against any reprisals is a matter of the utmost urgency. As the

Commission itself experienced, the Togolese authorities have resorted repeatedly to attempts at intimidating and bribing witnesses to give wrongful testimony or to refrain from testifying to it. In the course of the Commission's visit to Togo and neighbouring countries, Amnesty International has been contacted by people who intended to give evidence to the Commission or did so and reported having been the target of intimidation. Two fishermen from the coastal region of Benin who testified to the Commission have reported being threatened in Benin. Two other people who also had contacts with the Commission have since left Togo fearing for their safety.

In Amnesty International's view, an effective protection programme for all those who have been involved with the Commission and indeed for anyone who has been working on human rights or is related to victims requires a specialized, dedicated United Nations presence in Togo to be deployed as soon as possible with a mandate to also cover any such persons in Benin and Ghana.

5. Protection of human rights defenders

Amnesty International remains concerned that the charges against human rights defenders in the country and abroad, including the organization's Secretary-General, do not appear to have been dropped. It is the organization's understanding that the current legal situation following the Commission's intervention with the Togolese authorities is one of temporary suspension of criminal proceedings, which may resume at any time without the need for further evidence. Amnesty International believes that the Togolese Government should ensure that these proceedings are properly and definitively dropped.

The Togolese authorities should also put an end to the use of defamatory statements aimed at discrediting or intimidating human rights work, such as the letters purportedly written by the leader of the *Union des forces du changement* (UFC) to Amnesty International's Secretary General and referred to in paragraph 17 of the Commission's report. Amnesty International's Secretary General has not received any such letters nor the bribes referred to in them. The person alleged to be the author of the letters has stated that they are a fabrication and has reportedly filed a complaint in the courts about them.

6. The international community

Amnesty International appeals to governments to assist the United Nations and the Organization of African Unity with the provision of expert personnel and financial support to ensure they can implement these recommendations, first and foremost those relating to the protection of witnesses.

Amnesty International also appeals to those countries engaged in the transfer of military, security or police equipment or capability which contribute to the perpetration of human rights violations in Togo to end such transfers without delay.

Yours sincerely,

(Signed) Vincent Del Buono
Deputy Secretary General